

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRANDON MOYE, SR.,

Plaintiff,

No. 3:16-cv-00353-PK

v.

EMPLOYMENT DEPARTMENT.,

Defendant.

FINDINGS AND RECOMMENDATION

PAPAK, Magistrate Judge:

Pro se Plaintiff Brandon Moye, Sr. brings this action against the State of Oregon Employment Department. I granted Plaintiff's application to proceed *in forma pauperis*. ECF No. 4.

After filing the complaint in this action, Plaintiff filed a virtually identical complaint in this court, opening a new action, *Moye v. Employment Department*, No. 3:16-cv-00760-SB (*Moye II*). The only difference between the two complaints is the date on the signature page. Compare Compl. 5, ECF No. 2 with *Moye II*, Compl. 5, ECF No. 1.

Although Plaintiff filed the complaint in *Moye II* after filing the complaint in this action, in *Moye II*, Magistrate Judge Stacie F. Beckerman issued Findings and Recommendation. Judge

Beckerman recommends dismissing *Moye II* without prejudice for lack of subject matter jurisdiction. *Moye II*, F&R, ECF No. 5. The Article III judge assigned to *Moye II* has not yet ruled on the Findings and Recommendation.

I recommend dismissing this action with prejudice as duplicative of *Moye II*.

DISCUSSION

Here, the claims, relief sought, and parties are the same in both actions. Under these circumstances, dismissal with prejudice is appropriate. *See Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688–89 (9th Cir.2007) (when duplicative actions are filed, court has discretion to dismiss, stay, enjoin one action, or consolidate), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).

Although Plaintiff filed *Moye II* after filing this action, *Moye II* has pending Findings and Recommendation, while no activity has occurred in this action since this court granted Plaintiff's application for *in forma pauperis* status. Plaintiff will not be prejudiced by the dismissal of this action because *Moye II* remains pending.

CONCLUSION

For the reasons provided above, this action should be dismissed with prejudice as redundant of *Moye v. Employment Department*, No. 3:16-cv-00760-SB. A judgment should be prepared accordingly.

SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due fourteen (14) days from service of the Findings and Recommendation. If no

objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

NOTICE

A party's failure to timely file objections to any of these findings will be considered a waiver of that party's right to de novo consideration of the factual issues addressed herein and will constitute a waiver of the party's right to review of the findings of fact in any order or judgment entered by a district judge. These Findings and Recommendation are not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment.

Dated this 5th day of August, 2016.



Honorable Paul Papak
United States Magistrate Judge